IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.3259 of 2005 and
Civil Misc. No.8538-C of 2005

Date of Decision:12.9.2006.

Mangal Singh

....Appellant.

Versus

Charan Singh and others

...Respondents.

CORAM : Hon'ble Mr. Justice Ajay Kumar Mittal.

Present:- Mr.Ramesh Sharma,Advocate
for the appellant.

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AJAY KUMAR MITTAL, J.(ORAL)

Civil Misc. No.8538-C of 2005

For the reasons stated in the application, delay of 98 days in refiling the appeal is condoned.

Civil Misc. No.8538-C of 2005 stands disposed of.

R.S.A. No.3259 of 2005

The unsuccessful plaintiff has filed this Regular Second Appeal challenging the judgment and decree of the First Appellate Court dated 1.12.2004 whereby the judgment and decree of the trial court dated 16.5.2002 has been reversed.

The plaintiff filed a suit for declaration claiming that he is co-owner in joint possession with defendants of the land measuring 80 Kanal 9

Marlas as fully described in the head note of the plaint and also claimed that will dated 29.10.1991 executed by Atma Singh, his grand father, is forged, null and void and having no effect on his rights. On the pleadings of the parties, the following issues were framed by the trial Court.

1. Whether the plaintiff is entitled to the declaration as prayed for? OPP
2. Whether the Will dated 29.10.91 allegedly executed by Atam Singh is forged null and void? OPP
3. Whether the suit is not maintainable in the present suit?OPD
4. Whether the plaintiff has got no locus standi to file the present suit?OPD
5. Whether the plaintiff has got no cause of action to file the present suit?OPD

The Trial Court took up issues No.1 & 2 together for adjudication and held that the execution of the will Ex-D1 dated 29.10.1991 by Atma Singh, in favour of the defendants was duly proved by the testimonies of DW1 to DW3. The Trial Court, however, on the ground that no reasons for dis-inheriting father of the plaintiff i.e. Dalip Singh from the succession were given, held that the will was shrouded by suspicious circumstances. In view of this the Trial Court held that the Will was null and void and the declaration as prayed for by the plaintiff was granted and the suit was decreed.

On appeal by the defendants, the first appellate court has

reversed the above said finding on issue No.2 holding that the Will which is proved to be validly executed by Atma Singh, testator, was a registered Will and is to be given effect to. It also held that not giving any reasons for disinheritance of class-I heir alone could not be a ground to hold that the will was shrouded by suspicious circumstances. The appeal was accepted and the suit filed by the plaintiff was accordingly dismissed.

I have heard learned counsel for appellant and perused the record.

The trial Court had discarded the Will Ex-D1solely on the ground that no reason for disinheriting the Class-I heir, i.e. Dalip Singh father of the plaintiff had been enumerated in the Will. This alone cannot be a ground for discarding the will on the ground that it is shrouded by suspicious circumstances. The appellate Court had thus rightly reversed the judgment and decree of the trial Court as the trial Court was in error while discarding the Will on the ground of suspicious circumstances. No error could be pointed out in the judgment and decree of the First Appellate Court.

There is no merit in the appeal. Accordingly, the same is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

Sept 12,2006.
Reema